



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,987	10/14/2003	Gerardo Y. Pablo	51299.0002 (Hart)	3100

7590 05/05/2006

WAYNE L LOVERCHECK ESQ  
THE QUINN LAW FIRM  
2222 W GRANDVIEW BLVD  
ERIE, PA 16506-4508

EXAMINER
----------

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/683,987

Applicant(s)

PABLO, GERARDO Y.

Examiner

Justin M. Larson

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/14/03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/14/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Claims 1-10 are directed to the species shown in Figures 1-7 and 10-12, a bottle container that does not fold down.
- II. Claims 11-14 are directed to the species shown in Figures 8 and 9, a bottle container that does fold down.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic. Claims 2-9 are not generic because claim 2 requires a material element (a pair of bridging portions) additional to the only one bridging portion of claim 11. Therefore, claim 11 does not require all the limitations of the potentially generic claim 2. MPEP § 806.04(d)

During a telephone conversation with Mr. Wayne L. Lovercheck on February 8<sup>th</sup>, 2006, a provisional election was made with traverse to prosecute the invention of species I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3727

3. Claims 2-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2, 6, and 8, all recite the limitation "the opening" in lines 13, 5, and 2, respectively. In the claims, two openings have been defined. The ribs define the circular first opening (claim 2, line 9) and the splices in the ends of the ribs form the second opening (claim 2, line 12). It is unclear which opening the limitations "the opening" are referring to.

Claims 3-5, 7, 9, and 10 are rejected for depending on the limitations of claim 2.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Gendala (US 6,131,779). Gendala discloses a bottle container holder for attachment to the waistband or belt of the user for holding a beverage bottle, comprising: a clip portion (14) having a pair of spaced-apart legs (14a&14b) that define a slot for receiving therein the waistband or belt; a pair of arcuate ribs (18&20) attached to the clip portion and extending outwardly therefrom and defining an opening (22) for receiving the beverage bottle; each rib having a distal end (18a&20a) and the distal ends being spaced from each other by an outer splice opening so that the ribs can be displaced for inserting the

Art Unit: 3727

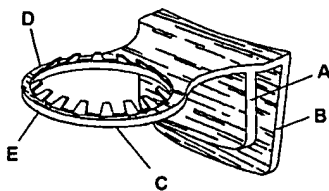
beverage bottle through the opening; and a plurality of protrusions (28&30) mounted to the interior walls of the ribs for facilitating the securement of the beverage bottle to the ribs.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phetthaweebancha (US D447,333) in view of Gagne (US 6,457,616) and Wright et al. (US 4,634,089). Phetthaweebancha discloses a bottle container holder for attachment to the waistband or belt of the user for holding a beverage bottle, comprising: a clip portion having a pair of spaced-apart legs (A&B below) that define a slot for receiving therein the waistband or belt; a pair of arcuate ribs (C&D below) attached to the clip portion and extending outwardly therefrom and defining an opening for receiving the beverage bottle; each rib having a distal end connected to one another at a location (E below); and a plurality of protrusions mounted to the interior walls of the ribs for facilitating the securement of the beverage bottle to the ribs. Phetthaweebancha fails to disclose the distal ends of the ribs being spaced from one another by a splice which allow the ribs to be displaced from one another when receiving the beverage bottle.



Gagne, however, also discloses a belt-mounted beverage holder and teaches that the arcuate ribs (109) have distal ends that are spaced from one another by a splice (122), which allows the ribs to be displaced from one another so that the beverage holder can accommodate different size containers (col. 3 lines 30-33). Similarly, Wright et al. also discloses a beverage container and shows the use of a splice (26) with a more definite opening or space than that of Gagne, again allowing the beverage container to support different size containers. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the beverage holder of Phetthaweebancha by including a splice between the distal ends of the arcuate ribs, as taught by Gagne and Wright et al., so that the beverage holder would be capable of supporting more than one size of beverage container, increasing the devices overall utility.

8. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phetthaweebancha ('333) in view of Goto et al. (JP 2002193260 A), and further in view of Weterrings et al. (US 5,655,673). Phetthaweebancha ('333) as described in paragraph #7 above discloses the claimed invention except for the distal ends of the ribs being spaced from one another by a splice that allow the ribs to be displaced from one another when receiving the beverage bottle.

Goto et al., however, also discloses a bottle holder with a clip portion for supporting a bottle on a user's belt or waistband. Rather than using a continuous ring structure for securing the bottle, as shown by Phetthaweebancha ('333), Goto et al. teaches that two protruding rib members (2) may be used to grip the neck of the bottle, the rib members having distal ends spaced from one another by an opening or splice which allows the ribs to be displaced from one another when receiving the beverage bottle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the continuous ring structure of the Phetthaweebancha ('333) with another well known bottle retaining means, such as the pair of protruding ribs, as taught by Goto et al., in order to allow the user to easily secure a bottle to their belt by simply pressing the bottle into place between the ribs.

Regarding the plurality of protrusions mounted to the interior walls of the ribs, while Phetthaweebancha ('333) discloses such protrusions on the interior walls of the continuous ring structure, it could be argued that it would not have been obvious to maintain these protrusions on the interior surface of the modified rib structure. Weterrings et al., however, also discloses the use of rib structures for retaining the necks of bottles or jars and teaches that having protrusions (30) on the interior surfaces of these ribs helps to further secure the bottles or jars within the ribs (col. 2 lines 3-7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include protrusions on the interior surface of the modified Phetthaweebancha ('333) device, as taught by Weterrings et al., in order to

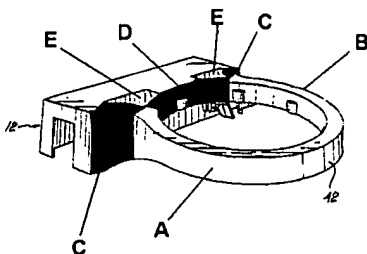
Art Unit: 3727

better secure a bottle within the ribs and prevent the bottle from sliding downward out of the ribs' grasp.

9. Claims 2-5, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Phetthaweebancha ('333), Gagne and Wright et al. as applied in paragraph #7 above, or Phetthaweebancha ('333), Goto et al., and Weterings et al. as applied in paragraph #8 above, in view of Levesque (US 6,299,116) and Phetthaweebancha (US D456,603).

Regarding claim 2, the art as applied in paragraphs #7 and #8 above discloses the claimed invention except for a pair of bridging portions attached to the clip portion and extending outwardly therefrom and an interior arcuate portion that interconnects the ribs.

Levesque, however, also discloses a support having a clip portion (12) with arcuate ribs (A&B below) extending therefrom to form a retaining ring (42). Openings (E below) are formed in the support such that a pair of bridging portions (C below) attached to the clip portion (12) extend outwardly therefrom, interconnecting ribs (A&B below) to the clip portion. Also, an interior arcuate portion (D below) is formed between the pair of bridging portions, connecting the interior of the arcuate ribs to form the opening through which an object is secured in the support.





While Levesque is related to a flowerpot holder, Phetthaweebancha ('603) teaches the implementation of openings like those of Levesque on a bottle holder. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above by forming a pair of openings in addition to the main opening, as taught by Levesque, using Phetthaweebancha ('603) as a motivating reference showing that such holes are known in the beverage holder art, the openings acting to reduce the amount of material required to form the beverage holder, in turn reducing the manufacturing costs.

Regarding claim 3, the ribs of the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above include an exterior wall, effectively satisfying the limitations of the claim.

Regarding claim 4, the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above includes a plurality of protrusions mounted to the interior walls of the ribs and the interior arcuate portion, effectively satisfying the limitations of the claim.

Regarding claim 5, the clip portion of the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above has legs perfectly capable of contacting the waste band or belt of a user, effectively satisfying the limitations of the claim.

Regarding claims 7-9, the protrusions of Levesque are shown to have a circular surface and are thus considered by the Examiner to be ellipsoids, either longitudinal or non-longitudinal, depending on which direction they are viewed from. It would have

Art Unit: 3727

been obvious to one having ordinary skill in the art at the time the invention was made to further modify the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above by replacing the original protrusions with ellipsoidal protrusions, as taught by Levesque, since both are well known shapes for such protrusions, and both serve to better retain the beverage container in the holder.

Regarding claim 10, the original Phetthaweebancha ('333) device is shown to be of one-piece construction and none of the modification made to the device would require the addition of separate components. Therefore, the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above is considered to be of one-piece construction. Being a design patent, it is unclear as to what material the original Phetthaweebancha ('333) device is made from, however, Levesque teaches that plastic can be used to form such holders. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the modified Phetthaweebancha ('333) device of either paragraph #7 or #8 above out of plastic, as taught by Levesque, since plastic is a cheap and easily-manufactured material. Examiner takes the position that any plastic can be considered an engineered resin.

***Allowable Subject Matter***

10. Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art contains other various belt-attached beverage container holders, some with spliced openings, some with different shaped protrusions.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Friday, 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JML  
4/28/06

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER